

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.323 OF 1997

Union of India through
Central Bureau of Investigation
Anti Corruption Unit VI,
8th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi ..Petitioner

V/s
Shri V. Mahadevan S/o
Late Sri T.V.V. Iyer,
Managing Director
State Bank of India,
Central Office Bombay ..Respondent.

Mr. J.C. Satpute, Senior Advocate for the petitioner.
None for respondent No.1.
Mrs. M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 12TH FEBRUARY, 2007.

ORAL JUDGMENT

. Aggrieved by the order passed by the learned Special Judge for Greater Bombay in Misc. Application No.505/1997 in Special Case No. 5/1995, discharging the respondent No.1 from the offence punishable under Section 11, 13(i)(b) and 13(i)(d) r/w section 13(2) of Prevention of Corruption Act, 1988, Union of India has preferred the present revision application.

2. Heard Mr. Satpute, Senior Counsel for the

applicant. None appeared for respondent No.1 on 9th February, 2007 when the matter was heard. Today also none is present for respondent No.1. Perused the record.

3. Prosecution case, in brief, is that respondent Mahadevan was the Deputy Managing Director and thereafter Managing Director of State Bank of India between 1987 to 1992. During that period he indulged in acts, which amount to criminal misconduct, for obtaining for himself various shares of several limited companies for consideration which was much less than the market price of the shares at the time of purchase. It is alleged that by misusing his official position as a Deputy Managing Director or Managing Director of the Bank, he made a pecuniary advantage to the tune of Rs.19,12,662/-. After investigation charge-sheet was filed. On an application moved by respondent-accused, the learned Special Judge, passed impugned order dated 11/9/1997 discharging the accused, holding that as per the Service Rules he could not buy the stock, shares and securities without consideration and further he could not deal in speculation which would require frequent purchase of shares and the securities, however there was

no material to show that he had indulged in speculation for the purpose of Rules 61(I) of the Service Rules, applicable to the Officers of the State Bank of India. The learned Judge also found that the statements of the witnesses of different companies reveal that the respondent- accused had made the payment for purchase of said shares and stock.

4. Prosecution case against the respondent is that he repeatedly accepted or obtained for himself valued shares and stocks for a consideration which he knew to be inadequate from the persons, who were concerned or were likely to be concerned in any proceeding or business transacted or about to be transacted by him and also that as a public servant, while holding office as such, obtained valuable shares and securities for pecuniary advantage by abusing his position as such. During the investigation statements of several witnesses were recorded. It was revealed that the respondent had purchased 1000 shares of Karmobiles Ltd on 26/10/1989 for Rs. 15,000/-, whereas market price of the said shares on the said date was Rs. 60,000/-. He had purchased 1000 shares of Shree Ishar Alloys Steel Ltd. in July, 1990 from the Director's quota for Rs.

15,000/- while market price of the same at that time was Rs. 35,000/-. He had purchased 1050 shares of Sterlite Industries in February, 1989 for Rs. 70,000/-, while market value was Rs. 1,20,000/-. He had purchased 700 shares of the same company in March, 1991 for Rs. 63000/- while market price was Rs. 77,000/-. He had also purchased 2400 shares of Videocon for Rs. 1,22,000/- where as the market price of the same at that time was Rs. 2,04,000/-. His wife Smt. Lalitha also got 500 equity shares from promoter's in Videocon. Again in June 1988 he had purchased 1000 shares from Comet Steels for Rs.15000/- while the market price was Rs. 25,000/-. He had purchased 1500 shares from Sona Sterling System in September, 1991 for consideration of Rs.30,000/- while the market price was Rs. 1,07,250/-. He had purchased shares 1000 shares of Zindal Strips in December 1989 for Rs. 70,000/- and 1320 shares for Rs.92400/- while market value of shares during the relevant period was Rs.2,40,000/- and 9,90,000/- respectively. He purchased 500 shares of Ahmednager Forgings in May 1992 for Rs.11,500/- while the market price of the same was Rs. 75,000/-. He purchased 1000 shares of Woodworth India Ltd. in March 1992 for Rs. 40,000/- when the market price was Rs. 72,000/-.

According to the prosecution, the applicant had not purchased share in the open market but he had purchased shares of Managing Directors, Directors and senior officers of the concerned companies, which they had renounced, clearly in favour of the present applicant. According to the prosecution, thus the applicant had purchased huge stocks and shares of the different companies whereby he took pecuniary advantage to the tune of Rs. 19,12,662/-. It is also alleged that in consideration of the pecuniary advantage, he had either sanctioned loans or cash credit facilities or had extended cash credit facilities.

5. This shows that prima facie respondent by taking advantage of his position, as Deputy Managing Director or as Managing Director of State Bank of India, which is Public Sector Bank, had purchased the stocks, shares and securities for taking pecuniary advantage which he could not have otherwise nor he could have taken such advantage, had he purchased shares from the open market. The learned Special Judge while passing order of discharge referred to the State Bank of India Officers Service Rules, mainly Rule 60(i) (ii) and 61(I), which provide that no officer in his individual capacity is

allowed to buy or sell stocks, shares or security of any description without funds to meet full cost in case of purchase. Further no officer is allowed to speculate any stock, shares or securities which naturally mean that he cannot frequently deal in purchase and sale of the same, so as to embarrass or influence him in the discharge of his duties. Rules 61(I) provides that nothing in the rule shall be deemed to prohibit an officer from making bonafide investment of his own funds in such securities as he may wish to buy. Though there is nothing to show that the respondent had entered into speculation of the stocks and shares, it is clear that he had purchased stocks and shares not from the open market by paying full market price but by adopting the method of renunciation of such valuable shares by the Managing Directors, Directors or Senior Officers of the Company in his favour at the rates which were much less than the market price. Therefore, prima facie it cannot be said that by purchasing the shares of different companies he had bonafide invested his own funds in such securities. It appears that prima facie, in discharge of his official duties, he accorded sanction for different loans, credit facilities or extension of credit facilities in favour of the companies from which

he had purchased shares at rates much less than the market price. In my opinion, the learned Special Judge did not take into consideration all these facts while passing order to discharge the respondent. The learned Special Judge only found that respondent had paid price for the shares and that too from his own funds. The facts noted above would clearly shows that he had purchased shares and stocks for inadequate consideration and naturally this could be possible because of the position, which he was holding at that time. Therefore, prima facie in my opinion, the alleged offence under Sections 11, 13(i) (b) and 13(i(d) punishable under Section 13(2) of the Prevention of Corruption Act are made out. The learned Special Judge committed serious error in discharging the accused. If the accused will be put to trial, naturally he would get full opportunity of cross-examining witnesses and to produce his own evidence, if he so desires to establish that he had not misused his position and that the price which he had paid for the different shares was adequate price.

6. Taking into consideration the facts and circumstances noted above, it is difficult to sustain the impugned order. Therefore, revision application is

hereby allowed The impugned order is hereby quashed and set aside. The special Case No.. 5/1995 is hereby restored to the file of the Special Judge, Greater Bombay with direction to proceed with framing of charges and trial as per law.

(J.H. BHATIA, J.)